IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3516 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULABKHAN ABDULLAKHAN PATHAN - Petitioner(s)

Versus

ASSISTANT COMMISSIONER OF LABOUR - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

MR KL PANDYA AGP ADVOCATES for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 06/07/2005

ORAL JUDGMENT

1.0 The petitioner herein has challenged the order dated 05.06.1998 passed by the respondent, whereby the respondent has refused to refer the dispute raised by the petitioner

on the ground of delay.

2.0 The petitioner was working with the respondent Corporation as a Driver since more than 17 years. On the ground of absenteeism, the petitioner was dismissed from service on 11.02.1985. Feeling aggrieved by the said order, the petitioner raised a dispute before the Assistant Labour Commissioner who refused to entertain the dispute on the ground of delay. Hence, this petition.

3.0 Mr. Mukesh H Rathod learned advocate for the petitioner has submitted that the Conciliation Officer has committed an error in refusing to refer the dispute on the ground of delay inasmuch as the duty of the Officer was to submit the failure report and thereafter, the appropriate authority would have considered the same. He has submitted that by doing so, the Officer has travelled beyond the scope and powers, and therefore, the impugned order is required to be quashed and set aside.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. On the facts of the case, I am of the view that the Officer has travelled beyond the powers conferred upon him. It is clear that there is no prescribed period of limitation under the Industrial Disputes Act. As per the settled law, if ultimately required, the Labour Court can consider denying back wages or any other benefits to the workman due to the delay.

4.1 Moreover, in view of the decision of this Court in the case of Karsanbhai L. Harijan v. Western Railway, reported in 2001(1) GLH 441 wherein the Court held that in such case

the Court can mould relief by refusing back wages or directing payment of part of back wages, the competent Officer ought not to have rejected the dispute on the ground of delay.

5.0 In the premises aforesaid, the impugned order is quashed and set aside. The competent Officer is directed to refer the dispute to the Labour Court and the Labour Court shall take appropriate decision in the matter within a period of six weeks from the receipt of writ of this order. It is made clear that except the aforesaid issue, this Court has not gone into the merits of the matter. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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